IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.313 OF 2004 IN SUIT NO.2711/2003
WITH
CHAMBER SUMMONS NO.676 OF 2005 IN SUIT NO.2711/2003

Alstom Power Generation A.G. & ors.
..Plaintiffs.
Vs.
National Insurance Co. Ltd. and ors.
..Defendants.

Mr. U.J. Makhija with Mr. R.N. Mulla i/by Mulla and Mulla for the Plaintiffs in support of Chamber Summons No.313 of 2004.

Mr.P.K. Samdhani for the Applicants in Chamber Summons No.313 of 2004.

Mr. U.J. Makhija with Mr. R.N. Mulla i/by Mulla & Mulla for the Plaintiffs in support of Chamber Summons No.676 of 2005.

CORAM : A.M. KHANWILKAR, J.
DATED : 20/6/2005

P.C.:

1. None appears for the applicants in Chamber Summons No.313 of 2004. Same is dismissed for default.

2. After some time the counsel for the applicants after giving notice to the counsel for the plaintiffs mentioned the matter pointing that at the relevant time he was held up in some other court.

As the restoration of this chamber summons is mot opposed, the chamber summons is restored to file to its original number.

3. The counsel for the applicants states that the applicants have now been advised to withdraw this chamber summons and they are not interested in prosecuting this chamber summons on the ground on which the relief in this chamber summons is founded. However, the applicants pray that they may be granted liberty to file fresh chamber summons for revocation of leave under clause XII on the ground of forum non convenience which is otherwise available to the applicants and vaguely touched upon in the present affidavit. The counsel for the plaintiffs has strongly objected for grant any such liberty. According to the plaintiffs, this chamber summons is taken out as back as in Feb.2004 and the suit cannot proceed because of the pendency of the present chamber summons. In the circumstances, I proceed to pass the following order.

ORDER

1. Chamber summons is dismissed as withdrawn.

2. The applicants may take out chamber summons for the relief of revocation of leave under Clause XII, however, that remedy is without prejudice to the rights and contentions of the plaintiffs about the maintainability of such application or otherwise. Subject to above, that application will be decided on its own merits in relation to the ground of forum non convenience only.

.....

CHAMBER SUMMONS NO. 675 OF 2005

1. Although the defendants have been duly served, no reply has been filed opposing this application. In that sense, the averments made in the affidavit in support of the chamber summons have remained uncontroverted. Accordingly, this chamber summons succeeds in terms of prayer clause (a). Same is made absolute in terms of prayer clause (a).

2. In addition to the amendment in terms of Schedule of this chamber summons, the plaintiffs are granted liberty to carry out further amendment by incorporating following sentence at the end of Paragraph (v) of the schedule namely :

"The 2nd Defendant carries on business and/or is deemed to carry on business in Mumbai".

3. Accordingly, chamber summons is made absolute in the above terms. Amendment to be carried out within two weeks from today. No order as to costs.

(A.M. KHANWILKAR,J.)